

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID S. JONES,	*	Case No. 16-CV-02194 (RML)
	*	
Plaintiff,	*	Brooklyn, New York
	*	October 11, 2018
v.	*	
	*	
TREVOR TAHIEM SMITH, et al.,	*	
	*	
Defendants.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR EVIDENTIARY HEARING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	JAMES A. MONTGOMERY, ESQ. Law Office of James Montgomery 267 Fifth Avenue, Suite 810 New York, NY 10016
For the Defendants:	KEVIN M. BROWN, ESQ. Mintz & Gold, LLP 600 Third Avenue, 25th Floor New York, NY 10016

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1 (Proceedings commenced at 2:22 p.m.)

2 THE COURT: Okay. We are here on docket no. 16-CV-
3 2194, Jones versus Smith.

4 Will counsel please state their appearances for the
5 record.

6 MR. MONTGOMERY: James Montgomery, appearing for the
7 plaintiff, Your Honor.

8 MR. BROWN: Kevin Brown, of Mintz & Gold, appearing
9 for the defendants.

10 THE COURT: So we're here for a hearing. And who
11 would like to call the first witness?

12 MR. BROWN: We would call -- I guess defendants
13 would call Mr. Jones.

14 THE COURT: Thank you. Mr. Jones, would you mind
15 coming up here and sitting in the witness stand. I promise
16 you it will be as comfortable as the seat you were in.

17 MR. JONES: All right.

18 THE CLERK: Would you please raise your right hand.

19 DAVID S. JONES, DEFENDANT'S SWORN

20 THE CLERK: And please also state your full name.

21 THE WITNESS: My name is David Jones.

22 THE CLERK: Thank you.

23 THE WITNESS: You're welcome.

24 THE COURT: Your witness.

25 MR. BROWN: Just do it right from here, Your Honor?

1 THE COURT: Wherever you'd like. You know, I
2 actually put that podium in the wrong spot there. So if you
3 want to pull it back and put it over.

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Good afternoon, Mr. Jones. How are you today?

7 A Good afternoon. I'm quite well, thank you.

8 Q And you understand we're at a hearing today about your
9 status as an employee or an independent contractor. Do you
10 understand that, correct?

11 A Yes.

12 Q And there was a time when you drove for the artist known
13 as Busta Rhymes?

14 A That's correct.

15 Q And how long did you drive for him?

16 A I would say approximately a year and a half.

17 Q Are you familiar with an entity known as Divine Limo?

18 A Yes, I am.

19 MR. BROWN: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. BROWN:

22 Q I placed a document in front of you that's previously
23 been marked Defendant's Exhibit A. Do you recognize that
24 document, Mr. Jones?

25 A Yes, I do.

1 Q And what is that document?

2 A It is a certificate of incorporation.

3 Q For Divine Limo?

4 A Yeah. For Divine Limo, yes.

5 MR. BROWN: And we would move the admission of
6 Defendant's Exhibit A.

7 MR. MONTGOMERY: No objection.

8 THE COURT: Admitted.

9 (Defendant's Exhibit A received in evidence.)

10 BY MR. BROWN:

11 Q When Mr. Rhymes paid you for your services as his driver,
12 he paid Divine Limo, correct?

13 A Yes, that's correct.

14 Q And that's a company you operate, right?

15 A That's correct.

16 Q And you set up by your sister, is that correct?

17 A Yes.

18 Q And Divine Limo was set up and incorporated so that you
19 personally could profit from working as a limo driver,
20 correct?

21 A Yes.

22 Q And Divine Limo was set up before you ever began working
23 for Busta Rhymes?

24 A Yes.

25 THE COURT: Could you establish a date for that?

1 BY MR. BROWN:

2 Q Do you recall when Divine Limo was set up?

3 A No, not at all. That was several years ago. I couldn't
4 even guess. At least ten years ago I would say.

5 Q At least ten years ago?

6 A Yes.

7 Q And when did you begin driving for Mr. Rhymes?

8 A Approximately a year and a half ago.

9 Q A year and a half ago.

10 A Yes.

11 Q And when did your employment with Mr. Rhymes terminate?

12 A It's been a while. So what is it 2018? 2017 probably.

13 Q September 2017.

14 A Yes.

15 Q So Divine Limo was set up before let's say 2014?

16 A Yes.

17 Q At the time Divine Limo was set up, you were working for
18 another company, correct?

19 A That's correct.

20 Q Is that R&K Limo?

21 A Yes, it was.

22 Q And why was Divine Limo set up?

23 A It was set up for the purpose of myself being
24 independently able to work and obtain money. It was set up
25 for that. That was the purpose. I was trying to grow in a

1 business sense and my sisters were backing me.

2 Q And Mr. Rhymes, he's not in the business of operating a
3 car service, correct?

4 A No, he's not.

5 Q He's a musical artist?

6 A Yes, he is.

7 Q So you were driving a limo for him or car for him, that
8 was something auxiliary to his main occupation, correct?

9 A Yes, I would say so.

10 Q And the compensation Mr. Rhymes provided to Divine Limo
11 for driving, for your driving for him, how was that reported
12 to the IRS?

13 A Oh, I would -- I would have taxes taken out of the monies
14 that I earned from Mr. Rhymes. And then I would file taxes
15 for the corporation with the government.

16 Q I'm going to place a document in front of you that is
17 marked Defendant's Exhibit B. Are you familiar with that
18 document?

19 A Yes, I am.

20 Q What is that document?

21 A This is a tax preparation for 2015, a corporation tax
22 return.

23 Q For Divine Limo?

24 A For Divine Limo.

25 Q And the income that you received from Mr. Rhymes for

1 driving for him, it was reported on Divine Limo's tax returns,
2 is that correct?

3 A Yes. Yes, it was.

4 Q And did you also take deductions related to expenses you
5 incurred for driving Mr. Rhymes --

6 A Yes, I did.

7 Q -- on these tax returns?

8 A Yes, I did.

9 Q Were you the only person that Divine Limo paid to drive
10 Mr. Rhymes?

11 A No. I had several gentlemen that was working for me --

12 Q That was --

13 A -- that would substitute drive for me, yes.

14 Q That was Mr. Edward?

15 A Yes.

16 Q And Mr. Skinner?

17 A Yes.

18 Q And when Mr. Edward or Mr. Skinner drove for Mr. Rhymes,
19 did that change the compensation for Divine Limo at all?

20 A No, it did not.

21 Q You would take the Divine Limo compensation and give a
22 portion of it to Mr. Skinner or Mr. Edward, is that correct?

23 A That's correct.

24 Q And was Mr. Rhymes the only customer of Divine Limo?

25 A No, he was not.

1 Q Are you familiar with an individual named Terrence Nash?

2 A Yes.

3 Q And you also drove for him at the same time you drove for
4 Busta Rhymes, is that correct?

5 A Yes, that's correct.

6 Q And, in fact, at the time that you were driving for Mr.
7 Rhymes, you were free to take on other additional customers if
8 you wanted to, correct?

9 A Yes, that's correct.

10 Q Mr. Rhymes didn't place any limitation on you driving for
11 other people, is that correct?

12 A Yes.

13 Q And after you stopped driving for Busta Rhymes, did you
14 file a claim for unemployment?

15 A Yes, I did.

16 MR. BROWN: I would move the admission of
17 Defendant's Exhibit B before I move on.

18 MR. MONTGOMERY: No objection.

19 THE COURT: Admitted.

20 (Defendant's Exhibit B received in evidence.)

21 BY MR. BROWN:

22 Q I place a document in front of you marked Defendant's
23 Exhibit C. Are you familiar with that document?

24 A Yes, I am.

25 Q Can you identify it, please?

1 A It's an unemployment insurance monetary benefit
2 determination.

3 Q This is the claim that you filed for unemployment?

4 A Yes, it is.

5 MR. BROWN: I would move the admission of
6 Defendant's Exhibit C.

7 MR. MONTGOMERY: No objection.

8 THE COURT: Admitted.

9 (Defendant's Exhibit C received in evidence.)

10 BY MR. BROWN:

11 Q And who did you identify as your employer in your claim
12 for unemployment?

13 A Divine Limo, Incorporation.

14 Q So you viewed Divine Limo as your employer, not Busta
15 Rhymes, is that correct?

16 A That's correct.

17 MR. BROWN: I have nothing further.

18 THE WITNESS: Very well.

19 THE COURT: Any questions?

20 MR. MONTGOMERY: I have no questions, Your Honor.

21 THE COURT: I guess I have a few questions. So
22 let's start with Exhibit C.

23 Could I see that, please.

24 THE WITNESS: That would be the unemployment?

25 THE COURT: Yeah. Thank you.

1 THE WITNESS: Okay. Actually it's the rest of it.

2 THE COURT: Okay. Thanks.

3 (Pause.)

4 THE COURT: So were you granted unemployment?

5 THE WITNESS: Yes, sir, I was.

6 THE COURT: And who paid that?

7 THE WITNESS: It came out of Divine Limousine.

8 THE COURT: It came out of Divine Limousine?

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you. So when did you start
11 working for Mr. Rhymes?

12 THE WITNESS: I don't have -- I don't have -- Your
13 Honor, I don't have the exact date, but since my daughter's
14 two, that would be 2016, probably around end of 2014, 2015.

15 THE COURT: Okay. How long did you -- how long did
16 you work for him?

17 THE WITNESS: Approximately a year and a half, maybe
18 a little bit more.

19 THE COURT: Did you have some kind of contractual
20 relationship with him?

21 THE WITNESS: No.

22 THE COURT: Did he -- how did you or he set your --
23 the payments you would receive from him?

24 THE WITNESS: Well, he thought -- he decided how
25 much money that he would -- was going to pay me per year.

1 THE COURT: Okay.

2 THE WITNESS: And I agreed with that.

3 THE COURT: Okay. And how much was that?

4 THE WITNESS: It was 100,000 a year.

5 THE COURT: Okay. And for that 100,000, did he
6 require you to work a certain number of hours or be available
7 a certain amount of time for him?

8 THE WITNESS: It was as directed. However long it
9 took for me to perform the service of driving him to and fro.

10 THE COURT: Uh-huh.

11 THE WITNESS: It was never mentioned how long that
12 particular day would take, how many hours of that day.

13 THE COURT: So were you expected to be available
14 certain times for him?

15 THE WITNESS: Yes.

16 THE COURT: How did that work?

17 THE WITNESS: Well, I would -- at the end of the
18 evening, initially we had -- he would tell me what time that
19 he needed me the following day.

20 THE COURT: Okay.

21 THE WITNESS: Then it was established that I would
22 be at the house at 2 o'clock in the afternoon every day and
23 just let him know that I was there, and then I'd wait for him
24 to come out.

25 THE COURT: And how long did you typically have to

1 wait for him to come out?

2 THE WITNESS: It depends, sir. It could have been
3 an hour, half an hour. It may have been three, four hours.

4 THE COURT: And then how long did you work for him
5 during the day?

6 THE WITNESS: Oh, that day would be -- sometimes it
7 would be quite extensive, 15 hours, 8 hours.

8 THE COURT: And were you expected to be available
9 during that time, that whole time?

10 THE WITNESS: Yes.

11 THE COURT: Okay. And were you expected to be --
12 you personally expected to be available --

13 THE WITNESS: Sir, in the -- me being in this
14 profession for quite some time, I would, you know, adhere to
15 whatever needs that were necessary to, you know, everything
16 involved comfortable for him. I was trained that way --

17 THE COURT: Right.

18 THE WITNESS: -- from the company, previous company.
19 So I had no qualms with -- about the times.

20 THE COURT: Okay. How many -- how often did you
21 drive as opposed to the other drivers for Divine?

22 THE WITNESS: Oh, I was the main driver. I would
23 drive mostly -- I would drive from 2:00 in the afternoon --
24 initially from 2:00 in the afternoon until 12:00 a.m. And
25 then I would have one of my relief drivers come on and take

1 over from that time until he went home.

2 THE COURT: And would that be every day or quite
3 often?

4 THE WITNESS: That would be Monday through Friday.

5 THE COURT: So how often did you need a relief
6 driver would you say?

7 THE WITNESS: Initially it turned out to be I would
8 just work the five days up until 12:00 a.m. And I would have
9 Mr. Skinner come in and relieve me.

10 THE COURT: Okay.

11 THE WITNESS: Yes.

12 THE COURT: So initially, how long a period of time
13 would that be that you turned it over to -- the car over to
14 Mr. Skinner?

15 THE WITNESS: Oh, how often did that happen?

16 THE COURT: Yeah. How often did that happen?

17 THE WITNESS: Every night.

18 THE COURT: Every night.

19 THE WITNESS: Monday through Friday, yes, sir.

20 THE COURT: Okay. Was that through the entire
21 period of your employment?

22 THE WITNESS: Often times it would change. Maybe he
23 would be late and I was told to stay home.

24 THE COURT: Okay.

25 THE WITNESS: Yeah.

1 THE COURT: But that was the standing arrangement?
2 That was --

3 THE WITNESS: That was the standing arrangement.

4 THE COURT: Okay. And what about Mr. Edward, where
5 did he fit in?

6 THE WITNESS: Mr. Skinner no longer wanted to work,
7 and he was tardy at times, so Mr. Edwards came in because he
8 was a colleague from the old company I used to work with.

9 THE COURT: Okay.

10 THE WITNESS: And I asked him to be a relief driver
11 for me. That's how he came aboard.

12 THE COURT: And how was he paid?

13 THE WITNESS: He was paid through Divine Limo. I
14 paid him.

15 THE COURT: Okay. How did you -- what kind of
16 arrangements did you make with Mr. Rhymes about relief
17 drivers?

18 THE WITNESS: Oh, I would speak -- I had spoken to
19 him because he knows I have a family.

20 So I just -- we just had a verbal agreement that I
21 would only work until 12 a.m. and I would have a relief
22 driver.

23 I would be available for him on the weekends if
24 needed, if I couldn't obtain, you know, a weekend driver
25 couldn't show up. But I would be the one that would primarily

1 drive him.

2 THE COURT: Okay. So how many hours a day would you
3 say you worked on average for Mr. Rhymes?

4 THE WITNESS: A week?

5 THE COURT: Well, just -- yeah, a week. You could
6 start with a week, but then in a day.

7 THE WITNESS: Oh, it would have been a 40 hour,
8 maybe 50 hour weeks. 50 hour weeks.

9 THE COURT: Did he ever pay you overtime while you
10 were working for him?

11 THE WITNESS: No.

12 THE COURT: Did you ever discuss overtime with him?

13 THE WITNESS: No, I did not.

14 THE COURT: Did he ever give you a notice of your
15 rights as an employee?

16 THE WITNESS: Yes. I believe I signed one from his
17 attorney initially.

18 THE COURT: Do you recall what that said or do you
19 have a copy of it?

20 THE WITNESS: No, I don't. I know it was a Homeland
21 Security paper, the tax papers, and I do believe it was
22 something pertaining to that.

23 THE COURT: Do you recall the complaint in this
24 case? Do you recall reading the complaint that you originally
25 filed in the case?

1 THE WITNESS: Yes, I do.

2 THE COURT: And did you read it carefully?

3 THE WITNESS: Just kind of I skimmed through it.

4 THE COURT: Okay. Was it accurate though?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Is everything in the complaint
7 accurate as far as you know?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Whose car did you drive when you
10 were driving Mr. Rhymes?

11 THE WITNESS: His car, sir. Mr. Rhymes' car.

12 THE COURT: Did you only drive his cars?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Did he pay for gasoline, tolls,
15 expenses and other costs associated with driving him?

16 THE WITNESS: Yes, he did.

17 THE COURT: Was there any costs that you had to pay?

18 THE WITNESS: No.

19 THE COURT: Okay. What about maintenance?

20 THE WITNESS: He would pay for maintenance on his
21 vehicles.

22 THE COURT: Now how did you -- how did you have
23 access to the car each day that you worked for him?

24 THE WITNESS: Well, there's a parking lot right
25 adjacent to where he lives at, and I would just go to the

1 garage. I would go into the lobby, let them know I was there,
2 and he would call down to the garage to have the vehicle
3 released.

4 THE COURT: Okay.

5 THE WITNESS: That's when I first came onboard. And
6 as everyone became familiar with me, I would just get the key
7 and just go and get the car.

8 THE COURT: So at the end of the day, did you return
9 the car with the keys?

10 THE WITNESS: Yes, I did.

11 THE COURT: And then each day you came back and --

12 THE WITNESS: Yes.

13 THE COURT: -- got the keys and the car again?

14 THE WITNESS: Yes, that's correct.

15 THE COURT: Okay. Was it always the same car or was
16 it a different car?

17 THE WITNESS: It was different vehicles.

18 THE COURT: And who chose which vehicles?

19 THE WITNESS: He would choose the vehicle. Unless I
20 knew something was not working properly in a vehicle, then I
21 would just bring out the other vehicle.

22 THE COURT: And do you know how he made the choice
23 as to which vehicle he was going to use?

24 THE WITNESS: No, I did not.

25 (Pause.)

1 THE COURT: So during the period of time you worked
2 for Mr. Rhymes, what percentage of your income did you derive
3 from him as opposed to driving for others?

4 The complaint says 90 percent, is that accurate or -
5 -

6 THE WITNESS: Oh, 90 percent of my income? Yes,
7 that's correct.

8 THE COURT: Okay.

9 THE WITNESS: Yes.

10 THE COURT: And how many days a week were you
11 required to work?

12 THE WITNESS: I was available for seven days.

13 THE COURT: Seven days.

14 THE WITNESS: Yeah. But primarily I would just
15 drive for the five.

16 THE COURT: Mm-hmm.

17 THE WITNESS: Yeah.

18 THE COURT: And being -- what does that mean to be
19 available?

20 THE WITNESS: That if, in fact, I was needed if
21 someone didn't show up, or one of my relief drivers wouldn't
22 show up, then I would just step in and, you know, take all of
23 the care of the responsibility.

24 THE COURT: Okay. Did you ever work more than 14 or
25 15 hours a day?

1 THE WITNESS: No.

2 THE COURT: Did you ever work more than ten hours a
3 day?

4 THE WITNESS: Yes.

5 THE COURT: How often would you say?

6 THE WITNESS: I would say that would have been about
7 70 percent of the time.

8 THE COURT: 70 percent?

9 THE WITNESS: Yes.

10 THE COURT: And more than eight hours a day?

11 THE WITNESS: Yes.

12 THE COURT: Again, 70 percent --

13 THE WITNESS: The same, yes, 70 percent.

14 THE COURT: Okay. And again, you received no
15 overtime for that?

16 THE WITNESS: No. Did Mr. Rhymes say anything to
17 you about how he felt about other people driving him? In
18 other words, did he expect you to drive him every day? Or did
19 he -- or could you have sent someone else?

20 THE WITNESS: Yeah. Yeah, I could have sent someone
21 else. He expected me to drive every day, but there wouldn't
22 have been an issue, if I had something to do, or some business
23 to take care of or a doctor's appointment, then there wouldn't
24 be an issue.

25 THE COURT: Did that ever happen?

1 THE WITNESS: Yes, it has.

2 THE COURT: Okay. So if I understand it correctly,
3 the rule was that you would drive him every day unless you had
4 a doctor's appointment or some other business to take care of?

5 THE WITNESS: Yes, sir. That's correct.

6 THE COURT: And then after midnight, there would be
7 a relief driver if you were needed because you had a family to
8 take care of?

9 THE WITNESS: That's correct. Well, the relief
10 driver was mandatory after midnight. Then I would definitely
11 have a relief driver come in.

12 THE COURT: Okay. And that was part of the
13 agreement you had with Mr. Rhymes?

14 THE WITNESS: Yes, sir.

15 THE COURT: So you said you drove for Mr. Rhymes
16 approximately 90 percent of the time. Who else did you drive
17 for?

18 THE WITNESS: An artist -- his name is Terrence
19 Nash. And he's a rhythm and blues artist. And whenever he
20 would come to New York, I would -- I would drive him and I
21 would put a relief driver with Busta Rhymes. He had no issue
22 with that. But, yeah, that's who I used to drive.

23 THE COURT: How often would he come to New York?

24 THE WITNESS: Out of the year, perhaps anywhere from
25 12 to 15 times.

1 THE COURT: Okay. And did you know him
2 independently or did you know him through Mr. Rhymes?

3 THE WITNESS: No, I knew him independently.

4 THE COURT: So you have connections in the music
5 world?

6 THE WITNESS: That's correct.

7 THE COURT: Okay. Are you a musician yourself?

8 THE WITNESS: No, I'm not.

9 THE COURT: You're just know some musicians?

10 THE WITNESS: Yes.

11 THE COURT: Was there anybody else you drove for
12 besides him?

13 THE WITNESS: Yes. During the time of --

14 THE COURT: During that time, yes.

15 THE WITNESS: Yes. I drove Colin Powell.

16 THE COURT: How did that come about?

17 THE WITNESS: They had some kind of event at the --
18 for the NAACP. Yeah.

19 THE COURT: And how did you -- did you know Colin
20 Powell?

21 THE WITNESS: No, I didn't know him. Actually, the
22 company I previously worked for, R&K Limousine, some kind of
23 way they had gotten the business for driving all the
24 dignitaries for the event, and they called me up and asked me
25 would I do that.

1 THE COURT: And you asked Mr. Rhymes if that was
2 okay?

3 THE WITNESS: Well, I didn't tell him what I was
4 doing. I just told him I had something to take care of.

5 THE COURT: Okay.

6 THE WITNESS: Yes.

7 THE COURT: So did you drive for other musicians as
8 well or is that -- was that later?

9 THE WITNESS: During the course of this --

10 THE COURT: Your employment with Mr. Rhymes.

11 THE WITNESS: No, that was it. That was it.

12 THE COURT: And then later you drove with others?

13 THE WITNESS: Not while I was with Mr. Rhymes.

14 THE COURT: Okay.

15 THE WITNESS: Just Terrence Nash.

16 THE COURT: And does Divine still exist? Are you
17 still --

18 THE WITNESS: On paper, it does. I haven't shut it
19 down yet. You know, I'm trying to -- just haven't gotten
20 around to it, but I don't use it any longer.

21 THE COURT: When did you stop using it?

22 THE WITNESS: Right after this incident with Mr.
23 Rhymes.

24 THE COURT: And why --

25 THE WITNESS: And that is, in fact, I actually used

1 the company when I started driving for Mr. Rhymes.

2 THE COURT: Uh-huh.

3 THE WITNESS: Yes.

4 THE COURT: Then why did you stop using it?

5 THE WITNESS: Well, I'm in a different profession
6 now.

7 THE COURT: Oh. May I ask what your profession is?

8 THE WITNESS: We -- I work for New York Paving and
9 so we put down the new streets. We're the guys that hold up
10 all the traffic in the morning. That's us.

11 So I do a lot of excavating, excavation of the
12 street, like the milling machine will come by, rip up the
13 street, and then the backhoe will come, lift it up, dump it in
14 the dump truck. Whatever's left, I'll shovel it into the
15 bucket. And then after that, the machine cannot go over the
16 manhole. So there's some little of the asphalt that's still
17 left, so I would jackhammer that out and clear that out so the
18 pavers could come through.

19 THE COURT: So let me understand. You're someone
20 who for a number of years made a living driving cars on roads
21 and didn't like it when the roads were all chopped up, and now
22 you're someone who makes a living doing the opposite?

23 THE WITNESS: Yes, that's correct.

24 THE COURT: Okay. Just so I understand.

25 THE WITNESS: I have a two year old now and -- a two

1 year old and an eight year old and I have to take care of
2 them.

3 THE COURT: So you're not a driver anymore?

4 THE WITNESS: No, I'm not. No.

5 THE COURT: So after you left Mr. Rhymes, was that
6 pretty much the end of your driving?

7 THE WITNESS: Well, I still drove Mr. Nash for some
8 time and then that was it. He sold his car and that was it.

9 THE COURT: Okay.

10 THE WITNESS: Yeah.

11 THE COURT: So am I right then that you used Divine
12 only during the time that you worked for Mr. Rhymes?

13 THE WITNESS: And Mr. Nash.

14 THE COURT: And Mr. -- did you start working for Mr.
15 Nash before or after you worked for Mr. Rhymes?

16 THE WITNESS: Actually, I was working for Mr. Nash
17 prior to Busta Rhymes.

18 THE COURT: Okay. And did you have -- and had
19 Divine been established when you started working for Mr. Nash?

20 THE WITNESS: Actually, I had used -- yes, the
21 Divine Limo was established. Yes, sir, it was.

22 THE COURT: Okay. And did you establish it
23 basically because you were working for Mr. Nash?

24 THE WITNESS: No, I had established the company
25 years prior to that. I just never used it.

1 THE COURT: You just never used it?

2 THE WITNESS: Yes.

3 THE COURT: And you started -- and when was the
4 first time you started using it?

5 THE WITNESS: I've been doing it so long, I really -
6 - I don't -- I can't give a date, but it was somewhere after
7 maybe 2010.

8 THE COURT: And what made you start using it? What
9 was the point of it?

10 THE WITNESS: Previously I had -- when I worked R&K
11 Limousine, I was an independent contractor. So I knew about
12 being responsible for having to have to pay taxes later on.

13 So my thought was that if I have them pay Divine
14 Limo, then I could set myself up where I could pay my Social
15 Security taxes and I can pay whatever taxes that were
16 necessary.

17 I wouldn't have to be holding to owing, you know,
18 with the 1099, because my experience was that you never get
19 around to paying it before you get the penalties and interest.
20 That was my position.

21 So I became more knowledgeable of that so I decided
22 to go through my company so that I would be able to collect
23 unemployment if something were to happen or -- you know, just
24 wanted to be more business sense, business wise.

25 THE COURT: Did you consider yourself an independent

1 contractor when you worked for Divine?

2 THE WITNESS: Yes.

3 THE COURT: And tell me why that was.

4 THE WITNESS: Because I had a thought that I was
5 separate from the company, you know. Then I needed to get
6 paid, so, you know, that's how that was. Yeah. That's how
7 the --

8 THE COURT: Did you consider it --

9 THE WITNESS: I know it was separate from the
10 company itself. Yes.

11 THE COURT: From Divine itself?

12 THE WITNESS: Yes.

13 THE COURT: And did you consider you were working
14 for Mr. Rhymes or for Divine?

15 THE WITNESS: For Divine Limousine.

16 THE COURT: And that he had hired -- he had hired
17 Divine Limousine?

18 THE WITNESS: Yes.

19 THE COURT: Not you?

20 THE WITNESS: That being because our relationship
21 goes way back. He, in fact, came to my wedding. He was in my
22 wedding. And I got married in 2010.

23 But, yeah. We had known each other. I had driven
24 him before through R&K Limousine, the company I was
25 mentioning, so I knew him throughout the years. And he would

1 ask me often times -- he would see me in the city -- come
2 drive for him. I was no. I'm okay where I'm at right now.

3 Eventually things got slow. And Mr. Nash stopped
4 coming as often as he was to New York. And I took him up on
5 his offer.

6 THE COURT: And at that point, did you think you
7 were working for him or that he had hired Divine?

8 THE WITNESS: No. I knew that I was independently
9 driving. I knew, you know, the difference.

10 THE COURT: But you felt that you were working for
11 Divine and Divine was working for him?

12 THE WITNESS: Yes. I fully wanted that established.
13 You know.

14 THE COURT: For what reason?

15 THE WITNESS: Moving forward, I wanted to be able to
16 protect myself if I needed to get unemployment. I needed to
17 protect myself for tax purposes, paying taxes. That set up a
18 tax program, Quickbooks I believe it was.

19 THE COURT: Okay.

20 THE WITNESS: And, you know, I would pay them to do
21 my payroll and deduct the taxes, the estimation of taxes. I
22 would quarterly pay them. So I just wanted to be more
23 responsible in that.

24 THE COURT: Anybody have any questions? Any
25 followup?

1 MR. MONTGOMERY: No cross, Your Honor.

2 MR. BROWN: No questions, Your Honor.

3 THE COURT: Hold it one moment.

4 (Pause.)

5 THE COURT: Sir, did you have to take off from work
6 to come here today?

7 THE WITNESS: No, I didn't. Actually it was a rain
8 day.

9 THE COURT: Oh, because it was raining?

10 THE WITNESS: Yes.

11 THE COURT: Oh, good. Oh, good.

12 THE WITNESS: Initially I had put for that, but it
13 turned out, like, okay, good. It didn't last the night we
14 worked until 8 o'clock.

15 So it was time and a half, so I actually worked five
16 hours overtime, so I actually got covered for today. So I
17 felt really good.

18 THE COURT: And you know your overtime rights now?

19 THE WITNESS: I'm sorry?

20 THE COURT: You know your rights now?

21 THE WITNESS: Yes.

22 THE COURT: Are you and Mr. Rhymes on good terms
23 these days or has this not been a good --

24 THE WITNESS: No. I haven't -- if I were to see
25 him, you know, salutations. But I have no hard feelings, no

1 problems about anything.

2 THE COURT: Let's go off the record for just a
3 second.

4 (Pause.)

5 MR. BROWN: Thank you, Your Honor.

6 MR. MONTGOMERY: Thank you.

7 THE WITNESS: Okay.

8 THE CLERK: You want to go back on the record?

9 THE COURT: Yeah. Go back on the record.

10 Thank you very much.

11 THE WITNESS: We're good? All right, Your Honor.

12 THE COURT: Okay. Good luck.

13 THE WITNESS: Thank you.

14 (Proceedings concluded at 2:51 p.m.)

15 I, CHRISTINE FIORE, court-approved transcriber
16 and certified electronic reporter and transcriber, certify
17 that the foregoing is a correct transcript from the official
18 electronic sound recording of the proceedings in the above-
19 entitled matter.

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21 

22 _____ October 17, 2018

23 Christine Fiore, CERT
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